

TGW General Terms and Conditions of Purchase

Version 11/2017



1. Area of Application

- 1.1. For all - also future - inquiries, orders, purchases as well as other legal transactions and services of the TGW Group, the following TGW General Terms and Conditions of Purchase shall be applicable. The supplier shall expressly acknowledge that TGW already now objects to all deviating regulations in a confirmation of order or in any other commercial document of the supplier. Deviating terms and conditions of the supplier and agreements which deviate from the present Terms and Conditions of Purchase shall only become valid upon express written agreement. Acceptance of deliveries and services or their payment does not constitute consent to the supplier's general terms and conditions.
- 1.2. The present Terms and Conditions of Purchase shall be applicable as framework agreements also for any further legal transactions with the supplier. In case an e-commerce agreement exists, these General Terms and Conditions of Purchase shall be supplemental to the e-commerce agreement.
- 1.3. In the event of conflicts among the contractual basis, the following order shall apply:
 - a) special agreements (e.g. delivery contract, quality assurance agreement, etc.), provided that they were acknowledged by TGW in writing
 - b) the present TGW Terms and Conditions of Purchase
 - c) non-mandatory provisions of commercial and civil law

2. Quote, purchase order, contract

- 2.1. Quote: The supplier shall exactly adhere in his quote to the details specified in our tender/enquiry in terms of quantity and condition of the goods to be delivered and notify us in writing of possible deviations beforehand. If the supplier fails to provide this written notification, he will not be entitled to claim a higher payment in case of such deviations. The supplier will immediately check invitations to tender and our purchase orders for apparent errors, ambiguities, incompleteness as well as inappropriateness of the specification chosen by us for the intended use, and point it out to us. All quotes made by the supplier or their preparation shall be on a binding basis and free of charge. Compensation for visits and other pre-contractual services shall not be granted, unless a compensation has been agreed in writing or is legally required.
- 2.2. Purchase order, contract: Only written orders (also including orders via fax and e-mail) or orders effected via the "myTGW" system shall be valid. Agreements made by word of mouth or telephone require written confirmation to be binding for TGW. Deviations from the purchase order in the supplier's confirmation of the order shall not take any effect. Our purchase order shall be binding for two weeks.
- 2.3. TGW may request reasonable changes in construction and design of the delivery item. The effects regarding possible cost additions or reductions will have to be adequately and mutually settled.
- 2.4. Delivery schedules based on a framework order or delivery planning shall become binding, if the supplier fails to reject to them within two workdays following their receipt, unless otherwise regulated in the e-commerce agreement.

3. Prices

- 3.1. The agreed prices shall be understood as including packaging, customs, insurance and other transportation or shipping expenses including the costs of a transport permit. The prices are fixed prices which may not be increased for any reason whatsoever.
- 3.2. Time for payment shall be 60 days net following receipt of invoice.

4. Invoicing and payment

- 4.1. Invoices shall be compliant with the legal requirements, in particular with respect to the Value Added Tax Act, and any special agreements that have been made separately; they must not be added to the delivery and have to be sent to TGW immediately after the goods have been shipped. Invoices shall in any case contain the complete order number and the order/contract date. The supplier shall be liable for any additional or consequential costs caused by incorrect or incomplete invoicing.
- 4.2. The terms of payment commence with the date of receipt of the invoice. Payment does not constitute a recognition of the correctness of the delivery nor a waiving of claims of any kind whatsoever. The supplier shall not be permitted to assign claims made against TGW to third parties, unless TGW consents to the assignment in writing.
- 4.3. If the supplier fails to perform a delivery or service as provided in the contract, TGW will be entitled to retain the corresponding payment until it has been performed according to contract. TGW shall be entitled to set off due payments against counter claims from the respective business case and from other business cases of TGW.

5. Delivery, delivery period and terms of delivery

- 5.1. Any delivery shall be made in accordance with Incoterms® 2010: DDP for delivery to the address specified in the order.
- 5.2. The delivery has to be made at the time and in the quantities defined in the contract or in the purchase order, the agreed delivery and service deadlines shall be binding. The receipt of the goods at the specified receiving office or point of use or the timeliness of successful acceptance shall be decisive for the compliance with the date of delivery or the term of delivery. The acceptance of delayed deliveries shall always be made under the reservation of any possible claims. Deadline shifts on the part of TGW shall be free of charge. Furthermore, TGW shall be entitled to interrupt the respective contractual relationship at its sole discretion at any time and without giving reasons; the dates and deadlines shall in such a case be adapted accordingly. The supplier will take any necessary measures which enable resumption of work as fast as possible after it has been released again by TGW. In such a case, the supplier will immediately notify TGW of the corresponding consequences and the resulting direct costs actually incurred by them. The additional direct costs resulting from the suspension will have to be proven by the supplier and be borne by TGW. Claims extending beyond that, on whatever legal ground, shall be excluded.
- 5.3. The supplier shall be obliged to immediately inform TGW in writing, as soon as a delivery might be delayed. In the event of a delayed delivery, TGW shall be entitled to deduct a contractual penalty to the amount of 0.5 % per day, but limited to 10 %, of the contract value. Furthermore, TGW shall reserve the right to withdraw from the contract without setting a period of grace in case of the supplier's delay; no rights shall arise for the supplier against TGW from this. TGW shall be entitled to this right of withdrawal as of the 5th day of delay. Other claims for compensation of all damages caused by the delayed delivery and adverse effects of whatsoever kind that go beyond the contractual penalty shall remain unaffected. Reservation of contractual penalty already at the moment of acceptance is not necessary, it may rather be claimed until the final payment is made, in particular the penalty may be deducted from the final invoice. Contractual penalties for intermediate deadlines may be deducted from partial payments.
- 5.4. The supplier shall only be entitled to plead absence of necessary documents to be provided by TGW, if he demanded their submittal in writing and did not receive them within a reasonable period of time; in such a case no delay in delivery will occur as long as TGW fails to submit the required

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- documents. The burden of proof thereof shall rest with the supplier.
- 5.5. TGW shall have the right to use the software belonging to the scope of supply of the product, including its documentation, to the legally permitted extent. Furthermore, TGW shall have the right to use such software - including documentation - with the agreed performance characteristics and to the extent required to use the product according to contract. The creation of a back-up copy shall be permitted also without express consent. The same shall apply for the use of industrial property rights existing in connection with the product.
- 5.6. Force majeure and industrial conflicts shall exempt the contracting parties from the duties to indemnify for the duration of interruption and to the extent of its effect. The contracting parties shall be obliged to immediately provide the required information as far as reasonable, and to adapt their duties to the changed circumstances in good faith. In case a circumstance extends over a period of more than two months, and the parties are not able to reach a mutual solution, both parties shall have the right to withdraw from the contract in full or in part. Such events of force majeure shall exclusively include: war, insurrection, natural disaster, fire, official strike.
- 6. Shipping**
- 6.1. Every shipment must include a TGW identification card and a delivery note. The supplier shall be liable for any damage, expenses, demurrage etc. arising from the non-compliance with this provision. The delivery will not be accepted without the corresponding shipping documents, but deferred at the supplier's cost and risk. Shipments have to be packed properly for the means of transportation used, in particular observing TGW's shipping instructions. If the supplier fails to observe these instructions, he shall bear all related costs.
- 6.2. Partial deliveries shall only be permitted upon prior written consent, otherwise TGW may refuse their acceptance. In any case, partial deliveries shall not be deemed as independent transactions and must be identified as such indicating the total quantity and the quantity of the respective partial delivery.
- 7. Contract documentation**
- 7.1. The supplier must not use any of the specifications, drawings and other technical documents, which have been provided by TGW to the supplier for the production of the delivery item or which the supplier has produced according to TGW's special specifications, for any purpose other than the production according to the respective order, nor copy them or make them available to third parties. The above-mentioned documents shall remain the exclusive property of TGW and on request are to be returned to TGW together with any extracts or copies made, or, as far as this is not practicable, to be destroyed. The processing of materials and the assembly of parts shall be effected for TGW. TGW shall become co-proprietor of the products manufactured by using materials and parts, stored by the supplier in this respect for us, at the ratio of the value of the supplies to the value of the total product. If the supplier does not, for whatever reason, get to deliver the goods, he will have to immediately return all documents to TGW without being asked to do so, or, as far as this is not practicable, to destroy them. The orders and all work relating to them shall be regarded as business secrets and are to be treated with confidentiality. The supplier shall be liable for all damages caused to TGW arising from an infringement of one of these obligations.
- 8. Project progress**
- TGW as well as the end customer shall be free to carry out announced checks concerning the progress and quality of performance of the service under contract on the construction site or the supplier's premises as well as on the premises of companies contracted by the supplier on workdays during the normal working hours and at their own discretion.
- 9. Transfer of risk**
- Deviating from possibly used Incoterms® 2010, the risk shall be transferred upon delivery of the goods at the place of destination.
- 10. Liability**
- The supplier shall be liable in accordance with the legal requirements; a liability for loss of profit shall however be excluded.
- 11. Warranty**
- 11.1. The supplier shall warrant the complete execution free from defects and according to order or delivery schedule of the scope of supply and services, in particular the usually assumed and at best assured properties mentioned in public statements and according to sample as well as the compliance with all relevant legal and official regulations of deliveries and/or other services that are valid at the place of destination and/or sales markets announced for TGW. The supplier shall demonstrably point all risks out to TGW which are usually related to the scope of supply and services. The supplier shall be liable in a corresponding manner for goods and components that have been delivered but not produced by him and/or for services rendered by him.
- 11.2. The warranty period shall end after the warranty period of the overall system in which the supplier's goods or services are integrated, but at the earliest 36 months after acceptance of the delivery or service. Terms under tort shall not be changed thereby.
- 11.3. TGW shall not be obliged to inspect the goods and notify of possible defects (including quality defects).
- 11.4. TGW shall be entitled at its own choice to request from the supplier to remedy the defects at his own cost and risk by correction (repair, provision of missing parts/services) and/or replacement at short notice or to claim reduction of price or to return the goods to the supplier at his costs and to demand corrective action, or to remedy the defects and perform not provided or defective services itself or have them corrected and performed by third parties at the supplier's cost and risk.
- 11.5. In the event of a claim being made against the title of warranty, the burden of proof shall rest with the supplier during the entire warranty period, to prove that a defect did not exist at the moment of handover.
- 11.6. In case of a hidden defect the warranty period shall start to be effective at the moment the defect is identifiable objectively. For goods which are usually kept in their packaging until they are used, defects which do not become visible until the goods are retrieved from their packaging shall be considered as hidden defects.
- 11.7. In case of defects of whatsoever kind, TGW shall in any case be entitled to retain the total outstanding purchase price or works compensation until full correction of defects.
- 12. Product liability**
- 12.1. The supplier has to enclose operating instructions and warning notices written in English language in his delivery and, as far as this is possible and reasonable, attach them to the delivered goods themselves. If the delivered goods turn out to be defective after acceptance of delivery and/or TGW detects that the properties of the product do no longer conform to the state of the art of science and technology, the supplier shall be obliged to take such goods back and refund the complete purchase price.
- 12.2. If claims are made against TGW due to its product being defective or in particular having violated any official safety regulations, or due to national or foreign product liability provisions, TGW will be entitled to demand compensation for this damage from the supplier, as far as this damage is attributable to the products he delivered. The supplier shall commit to fully exempt TGW from any resulting claims. This

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- damage shall also include costs of replacement as well as costs of a preventive and required product recall.
- 12.3. If claims are made against TGW due to goods delivered or services provided by the supplier, the supplier shall be obliged to immediately deliver any of the means of evidence requested by TGW at his own cost, such as in particular quality and inspection protocols, certificates and so forth.
- 12.4. The supplier shall be obliged to take out a corresponding standard liability insurance policy, TGW reserving the right to request the proof of a corresponding compulsory coverage from the supplier. If the supplier fails to fulfil such a request within a period of 14 days, TGW will be entitled to withdraw from the contract and demand compensation.
- 13. Spare parts**
- 13.1. The supplier shall guarantee supplies of spare parts or compatible parts for a period of at least 10 years.
- 14. Third-party property rights**
- 14.1. The supplier shall guarantee that the use of the delivered objects or other services under the contract does not infringe any property rights of third parties (patent, trademark or sample rights, copyrights, equipment, product names, know-how, territorial protection and rights of a similar kind, in fact even if their granting has been applied for as needed). The supplier shall indemnify and hold TGW fully harmless of any claims of third parties in this respect.
- 14.2. Without prejudice to further rights, TGW shall in such case be entitled to refuse acceptance of the goods, to place already accepted goods at the supplier's disposal again at his own cost and to retain payment of the total purchase price until the entitlement to the claims made has been clarified.
- 15. Withdrawal from contract**
- If the supplier fails to comply with his contractual obligations in full or in part (e.g. also including delay in intermediate deadlines of the planning and manufacturing process as well as dependant ancillary services), TGW will be entitled to withdraw from the contract in full or in part after having granted a reasonable period of grace without success and independent of a possible divisibility of the service. With regard to possible periods of grace, actually granting such a period, e.g. through repeated reminders to comply with the contract by TGW, shall be sufficient. In particular in the case of non-fulfilment of assured properties TGW will have the right, independent of a divisibility of the services, to fully withdraw from the contract. This shall in equal measure be applicable in case of a considerable aggravation of the supplier's financial status. The amounts already paid for the services affected by the withdrawal from contract plus the financing costs incurred for TGW have to be paid back immediately. No rights shall arise from such a withdrawal for the supplier against TGW. The supplier shall be obliged to immediately report circumstances of this nature to TGW in writing.
- 16. Cancellation**
- TGW shall have the right to withdraw from the contract at any time in full or in part, even if the supplier is not at fault. In such a case, TGW will be obliged to reimburse the supplier for the contract price in proportion to the already provided deliveries or performed services and, in addition, make up for the proved direct costs incurred for deliveries and services which are already in process or for the cancellation of sub-contracts. The supplier transfers the property of the respective deliveries/services upon their payment; the burden of proof for the existence of the aforementioned costs shall rest with the supplier. The contractor will make every possible and reasonable effort, upon declaration of cancellation, to keep the direct costs to be made up for by TGW to a minimum.
- 17. Confidentiality**
- The supplier may have access to certain proprietary and confidential information of TGW and its customers. Supplier recognizes and acknowledges the competitive value and confidential nature of the Information and the damage and lost business that could result to TGW if any such Information is disclosed to a third party or used independently by Supplier. Therefore, the supplier shall declare his agreement to treat that information as confidential and not to use said information in any case, except for the fulfilment of this contract, nor to disclose it to third parties. All already existing non-disclosure agreements between TGW and the supplier shall remain fully valid. The supplier agrees to indemnify TGW for any damages or costs caused by a breach of his duty to maintain confidentiality. Supplier agrees that in consideration of receipt of the Information and entry into this contract it will not solicit or accept business from TGW's customers or engage in direct communication with the customers other than as required to complete the sale of goods and/or services contemplated by this contract. Direct Inquiries to Supplier from TGW's customer for goods and/or services shall be forwarded to TGW for processing and shall not be fulfilled by Supplier without TGW's written approval. The Supplier agrees that the obligations of this paragraph shall remain in full force and effect during the service life of the site for which the goods and/or services were supplied to TGW's customer pursuant to this contract. Supplier acknowledges that damages may be difficult to prove and/or that there may be no adequate remedy at law for breach of this paragraph. As a result, TGW, in addition to any other rights and remedies it may have, shall be entitled to an injunction restraining the Supplier from violation of the terms of this paragraph. In addition, because of the anticipated difficulty in proving losses arising out of a breach of this paragraph, the Supplier agrees that TGW shall be entitled to liquidated damages for each material breach in the sum of \$100,000 for each breach, with such sum being offset against, and not in addition to, any compensatory damages that may be determined to be due TGW as a result of the Supplier's breach of this paragraph. The Supplier may not avoid the obligations of this paragraph by paying the Liquidated Damages. The Supplier further agrees to pay TGW's reasonable attorney's fees incurred in connection with any legal action brought to enforce the terms of this contract, in addition to any other costs or damages that may be found due.
- 18. Minimum wage requirements**
- In case the contractor performs his services in countries with minimum wage requirements and these are applicable for his services, he shall be obliged to comply with these requirements. The contractor shall guarantee the continuous and timely payment of the minimum wage. In case the contractor uses a subcontractor to fulfil his contractual obligations as agreed, he shall be obliged to pledge the subcontractor to comply with the minimum wage requirements as well. The contractor shall exempt TGW, upon first request, from any claims, monetary fines, penalties and costs which may result from claims being made against TGW with respect to the relevant requirements.
- 19. Non-solicitation agreement**
- 19.1. For a duration of one year after effectiveness of this agreement, the parties and their affiliated companies shall not entice away any employee of the contractual partner without prior written consent of that partner.
- 19.2. In case that provision is violated, the violating party shall owe the other party a contractual penalty in the amount of the last annual gross salary of the employee enticed away by that party. This contractual penalty shall be calculated on a pro rata basis in case of a shorter employment period of the employee.

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20. Advertising

Any type of publishing, referencing and advertising by the supplier with the deliveries and services as well as with the business relationship requires the written consent of TGW. Advertising emblems or logos on the scope of supply requires the prior written approval by TGW. Type plates shall be excluded.

21. Conformity

- 21.1. The supplier assures that all products delivered by him comply with the recognised industry standards as well as the relevant legal and official regulations, and the applicable provisions of the USA as well as their implementation in international law, wherever applicable.
- 21.2. Furthermore, the supplier will ensure the assignment of this obligation in the supply chain and prove this accordingly upon TGW's request.

22. Data protection

TGW points out that the supplier's data will be electronically saved and only used for the purpose of the contract.

23. Cessions / Sub-contracting

In the event of the existence of material circumstances, such as for example the relocation of the production site, TGW shall be entitled to prohibit the cession of the order with immediate effect and to demand performance according to contract from the supplier.

24. Compliance

The CONTRACTOR shall commit to comply with the Code of Conduct. This Code of Conduct is an integrative part of the present Terms and Conditions of Purchase, and available on the website under www.tgw-group.com.

25. Customs / export control

The supplier shall be obliged to inform TGW about any obligation to obtain a permit in case of re-exports of his goods in accordance with German, European, US exportation and customs regulations as well as the exportation and customs regulations of the country of origin of his goods in his business documents. Therefore, the supplier shall at least provide the necessary information as required according to the relevant customs and export regulations in his quotes, order confirmations and invoices for the affected items. The supplier shall be obliged upon TGW's request to communicate all further foreign trade details on his goods and their components to TGW in writing, and to immediately inform TGW (prior to the delivery of the affected goods) about all changes of the aforementioned details in writing.

26. Place of fulfilment, choice of law and jurisdiction

- 26.1. For all rights and obligations arising from the legal transactions made with TGW, the place of fulfilment for both parties shall be the respective delivery address, unless otherwise agreed in the tender/on the order form.
- 26.2. The place of jurisdiction for all disputes arising out of or in connection with the present contractual relationship shall exclusively be for the supplier the competent court in the State of Michigan. But TGW shall be entitled at its own option to claim against the supplier at any other court which may be competent under national or international law.
- 26.3. This agreement shall be subject to the laws of The United States of America. Conflict of laws of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG) shall expressly be excluded

27. Final provisions

- 27.1. If one or several provisions of TGW's General Terms and Conditions of Purchase is or becomes ineffective in full or in part, all remaining provisions of TGW's General Terms and Conditions of Purchase will remain effective. This shall also apply for possible loopholes of the agreement. The ineffective provision shall be replaced by a different provision which comes closest to the content and purpose of the ineffective provision.
- 27.2. The titles of the provisions contained in TGW's General Terms and Conditions of Purchase shall only serve for better clarity and must not be used for the interpretation thereof.
- 27.3. No business development taking place between the supplier and TGW and no delay or default regarding the exercise of a right, legal remedy or means granted to TGW according to the present General Terms and Conditions of Purchase shall be deemed as waiver of these rights. Any of the rights and legal means granted in these Terms and Conditions of Purchase or any of the legal remedies granted in these Terms and Conditions of Purchase shall be cumulative and exist coequally and additionally to other legally granted rights, legal remedies and means.

28. Non-contact provision for directly contacting customers

The supplier agrees not to contact the customer directly during the service life of the respective site handed over to the customer by TGW in relation to business activities in connection with these sites without the written consent of TGW, and shall refer any orders or enquiries received from the customer in connection with the sites to TGW. The supplier shall also procure that any member of its group shall similarly be bound and shall accept responsibility for any breach by such member of its group. The supplier shall indemnify TGW for all losses arising from any breach of this provision including without limitation loss of profits and loss of opportunity.